



JOHN ENGLER, Governor

DEPARTMENT OF ENVIRONMENTAL QUALITY

"Better Service for a Better Environment"

HOLLISTER BUILDING, PO BOX 30473, LANSING MI 48209-7073

INTERNET: www.deq.state.mi.us

RUSSELL J. HARDING, Director

July 24, 2001

Mr. David A. Ullrich
Acting Regional Administrator
United States Environmental Protection Agency
77 West Jackson Boulevard (R-19J)
Chicago, Illinois 60604-3590

Dear Mr. Ullrich:

The Michigan Department of Environmental Quality (MDEQ) believes that the United States Environmental Protection Agency (U.S. EPA) should assume the lead for selecting the remedy for the river portion of the Kalamazoo River Superfund site, as well as the other operable units where Records of Decision have not yet been drafted. The basis for our position follows:

1. The liable parties need to resolve their liability with your agency, in addition to ours, before proceeding with remedy implementation. This requires your agency to be intimately involved with remedy selection and that the remedy be implemented pursuant to a legally binding agreement with your agency.
2. Notwithstanding the fact that the site is currently being handled as a state enforcement lead, your agency is essentially controlling the critical aspects of the remedy selection process. Your staff recently advised us that substantial additional data collection is necessary to support the U.S. EPA remedial decision-making process. This is in spite of the fact your agency worked closely with us over the last several years in developing and implementing the remedial investigations recently concluded under state orders. In addition, your agency has raised new issues relative to the adequacy of the ecological and human health risk assessments, which were prepared by the state with substantial input from U.S. EPA staff. These issues prevent us from finalizing cleanup criteria, and U.S. EPA staff have indicated that resolution of these issues is tied to the completion of your new data-collection initiative.
3. Your agency has advised us that the remedy must also be reviewed by entities outside Region 5—the National Remedy Review Board, and by a headquarters committee charged with reviewing the National Research Council's risk management strategy for polychlorinated biphenyl contaminated sediments before the U.S. EPA can select a remedial alternative.

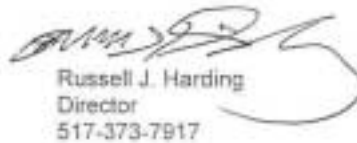
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4. The U.S. EPA has also recently advised our agency and the liable parties that federal permits must be obtained for all remedial work conducted by the liable parties unless the work is carried out pursuant to a legally binding agreement with the U.S. EPA. The permit exemption in Section 121(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, 1980 PL 96-510, does not apply if the liable parties are performing work pursuant to a legal agreement with the state. The agreement must be between the liable parties and the U.S. EPA.

Please let me know when we can have staff develop a plan and schedule for implementing the transition to federal lead. We recommend that the plan for transitioning the river portion of the site be given top priority.

If you have any questions, please contact Mr. Alan J. Howard, Chief, Environmental Response Division, at 517-335-1104, or you may contact me.

Sincerely,



Russell J. Harding
Director
517-373-7917

cc: Mr. Todd Goeks, National Oceanic Atmospheric Administration
Ms. Lisa Williams, United States Fish and Wildlife Service
Mr. Arthur R. Nash Jr., Deputy Director, MDEQ
Mr. Alan J. Howard, MDEQ